

§ 401.1

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401.652 No judicial review.

AUTHORITY: 12 U.S.C. 1715z-1 and 1735f-19(b); 42 U.S.C. 1437f note and 3535(d).

SOURCE: 63 FR 48943, Sept. 11, 1998, unless otherwise noted.

Subpart A—General Provisions; Eligibility

§ 401.1 What is the purpose of part 401?

This part contains the regulations implementing the authority in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) for the Mark-to-Market Program including the renewal of project-based assistance contracts for eligible projects without restructuring. Section 511(b) of MAHRA details the purposes, and section 512(2) details the scope, of the Program.

§ 401.2 What special definitions apply to this part?

(a) *MAHRA* means the Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105-65, 42 U.S.C. 1437f note.

(b) *Statutory terms.* Terms defined in section 512 of MAHRA are used in this part in accordance with their statutory meaning. These terms are: comparable properties, expiring contract, expiration date, fair market rent, mortgage restructuring and rental assistance sufficiency plan, nonprofit organization, qualified mortgagee, portfolio restructuring agreement, participating administrative entity, project-based assistance, renewal, State, tenant-based assistance, and unit of general local government.

(c) *Other terms.* As used in this part, the term—

Affiliate means an affiliate of the owner or an affiliate of the purchaser, as such terms are defined in section 516(a) of MAHRA.

Applicable Federal rate has the meaning given in section 1274(d) of the Internal Revenue Code of 1986.

Community-based nonprofit organization means a non-profit organization that maintains at least one-third of its governing board's membership for low-income residents from the local community, or for elected representatives

of community organizations that represent low-income residents.

Comparable market rents has the meaning given in § 401.410(b).

Disabled family has the meaning given in § 5.403(b) of this title.

Elderly family has the meaning given in § 5.403(b) of this title.

Eligible project means a project with a mortgage insured or held by HUD, project-based assistance expiring on or after October 1, 1998, and rents for assisted units exceeding comparable market rents; and otherwise meeting the definition of "eligible multifamily housing project" in section 512(2) of MAHRA.

HUD means the Director of the Office of Multifamily Housing Assistance Restructuring (OMHAR) or a HUD official authorized to act in lieu of the Director, when used in reference to provisions of MAHRA that give responsibilities to the Director, and otherwise has the meaning given in § 5.100 of this title.

NHA means the National Housing Act, 12 U.S.C. 1702 *et seq.*

Owner means the owner of a project and any purchaser of the project.

PAE means a participating administrative entity as defined in section 512(10) of MAHRA, or HUD when appropriate in accordance with section 513(b)(4) of MAHRA.

PCA means a physical condition assessment of a project prepared by a PAE under § 401.451.

PRA means a portfolio restructuring agreement as defined in section 512(9) of MAHRA.

Priority purchaser means a purchaser meeting qualifications established by HUD that is:

- (1) A tenant organization or
- (2) A tenant-endorsed community-based nonprofit organization or public agency.

Rental Assistance Assessment Plan means the plan described in section 515(c)(2) of MAHRA.

Restructured rent means the rent determined at the time of restructuring in accordance with section 514(g) of MAHRA.

Restructuring Plan means the Mortgage Restructuring and Rental Assistance Sufficiency Plan described in section 514 of MAHRA.

Section 8 means section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Section 541(b) claim means a claim paid by HUD under an insurance contract under authority of section 541(b) of the National Housing Act, 12 U.S.C. 1735f-19(b).

Tenant organization means an organization that meets regularly, whose officers are elected by a majority of heads of households of occupied units, and whose membership is open to all tenants of a project.

Unit of local government means the smallest unit of general local government in which the project is located.

§ 401.99 What actions must an owner take to request a section 8 contract renewal?

(a) *Requesting Restructuring Plan.* An owner may request a section 8 contract renewal as part of a Restructuring Plan by, at least 3 months before the expiration date of any project-based assistance or as soon as practicable if the contract will expire before January 13, 1999, certifying to HUD that to the best of the owner's knowledge:

(1) Project rents are above comparable market rents; and

(2) Neither the owner nor any affiliate is suspended or debarred, or, if so, a voluntary sale transfer of the property is proposed in accordance with § 401.480.

(b) *Eligible but not requesting Restructuring Plan.* If an owner is eligible for a Restructuring Plan but requests a renewal of project-based assistance without a Plan, HUD will consider the request, in accordance with § 401.601 if, at least 3 months before the expiration date of any project-based assistance or as soon as practicable if the contract will expire before January 13, 1999, an owner provides to HUD the certification required in paragraph (a) of this section, and the following additional information:

(1) A comparable market rent analysis;

(2) The prior fiscal year's audited financial statement for the project;

(3) An owner's evaluation of physical condition as provided in § 401.450; and

(4) Such other documents as the PAE or HUD may require.

(c) *Not eligible for Restructuring Plan.* Section 402.5 of this chapter addresses renewal of project-based assistance for a project not eligible for a Restructuring Plan.

[63 FR 48943, Sept. 11, 1998; 63 FR 71373, Dec. 28, 1998]

§ 401.100 Which projects are eligible for a Restructuring Plan under this part?

A Restructuring Plan may be requested by an owner of an eligible project that:

(a) Has project-based assistance with an expiration date of October 1, 1998, or later;

(b) Has current gross potential rent for the project-based assisted units that exceeds the gross potential rent for the project based assisted units using comparable market rents; and

(c) Is not described in section 514(h) of MAHRA.

[63 FR 48943, Sept. 11, 1998; 63 FR 71373, Dec. 28, 1998]

§ 401.101 Which owners are ineligible for a Restructuring Plan?

The request of an owner of an eligible project for a Restructuring Plan will not be considered if the owner or an affiliate is debarred or suspended under part 24 of this title, unless a sale or transfer of the property is proposed in accordance with § 401.480.

Subpart B—Participating Administrative Entity (PAE) and Portfolio Restructuring Agreement (PRA)

§ 401.200 Who may be a PAE?

A PAE must qualify under the definition in section 512(10) of MAHRA. It must not have any outstanding violations of civil rights laws, determined in accordance with criteria in use by HUD. If the PAE is a private entity, whether nonprofit or for-profit, it must enter into a partnership with a public purpose entity, which may include HUD. The formed entity must meet all legal requirements for a partnership. A PAE may delegate responsibilities only as stated in the PRA.